

STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

**FILED**  
Attorney No. 99000  
JUL 28 AM 9:40  
CIRCUIT COURT OF COOK  
COUNTY, ILLINOIS  
CHANCERY DIV.  
CLERK  
DOUGLASS BROWN

THE PEOPLE OF THE STATE OF ILLINOIS, )

Plaintiff, )

v. )

NO. **10CH32281**

VAN WITZ MANAGEMENT CORP., an Illinois )  
Corporation, VAN WITZ REAL ESTATE SERVICES, )  
INC., an Illinois Corporation, and )  
PAMELA VAN WITZENBURG, individually, )

Defendants. )

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

NOW COMES the Plaintiff, THE PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and brings this action complaining that Defendants, VAN WITZ MANAGEMENT CORP., an Illinois Corporation, VAN WITZ REAL ESTATE SERVICES, INC., an Illinois Corporation, and PAMELA VAN WITZENBURG, individually, charged for services as a real estate management company but failed to provide such services to consumers and, in support thereof, Plaintiff states as follows:

**PUBLIC INTEREST**

1. The State of Illinois and its citizens are and will be adversely impacted by Defendants' unfair and deceptive practices as alleged in this Complaint. Therefore, the Illinois Attorney General brings this action in the public interest of the citizens of the State of Illinois.

## **JURISDICTION AND VENUE**

2. This action is brought for and on behalf of THE PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, ATTORNEY GENERAL OF THE STATE OF ILLINOIS, pursuant to the provisions of the Consumer Fraud and Deceptive Business Practices Act ("Consumer Fraud Act"), 815 ILCS 505/1 *et seq.*, and her common law authority as Attorney General to represent the People of the State of Illinois.

3. Venue for this action properly lies in Cook County, Illinois, pursuant to Sections 2-101 and 2-102(a) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-101, 735 ILCS 5/2-102(a), in that the Defendants are doing business in Cook County, Illinois, and Cook County is the county of residence of the Defendants.

## **PARTIES**

4. Plaintiff, THE PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, is charged with the enforcement of the Consumer Fraud Act.

5. Defendant VAN WITZ MANAGEMENT CORP. was an Illinois Corporation involuntarily dissolved on January 8, 2010. Its principal place of business was at 8130 W. 111<sup>th</sup> Street, Palos Hills, in Cook County, Illinois.

6. Defendant VAN WITZ REAL ESTATE SERVICES, INC. was an Illinois Corporation involuntarily dissolved on November 13, 2009. Its principal place of business was at 5931 W. 87<sup>th</sup> Street, Oak Lawn, in Cook County, Illinois.

7. Defendant PAMELA VAN WITZENBURG is a real estate broker holding Illinois license number 475099678.

8. Defendant PAMELA VAN WITZENBURG is the President of VAN WITZ MANAGEMENT CORP., and she is also the President of VAN WITZ REAL ESTATE SERVICES, INC.

9. Defendant, PAMELA VAN WITZENBURG, at all times material to this Complaint, formulated, directed and controlled the acts and practices of both corporations, VAN WITZ MANAGEMENT CORP., and VAN WITZ REAL ESTATE SERVICES, INC.

10. VAN WITZ MANAGEMENT CORP., VAN WITZ REAL ESTATE SERVICES, and PAMELA VAN WITZENBURG are collectively referred to herein as the "Defendants."

11. For purposes of this Complaint for Injunctive and Other Relief, all references to any of the acts or practices of "Defendants" shall mean that such acts and practices are attributable to, or were implemented by and through the acts of PAMELA VAN WITZENBURG and the officers, members, owners, directors, employees, or other agents of the VAN WITZ defendants.

### **TRADE AND COMMERCE**

12. Subsection 1(f) of the Consumer Fraud Act, 815 ILCS 505/1(f), defines "trade" and "commerce" as follows:

The terms 'trade' and 'commerce' mean the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this State.

13. The Defendants were at all times relevant hereto, engaged in trade and commerce in the State of Illinois, by advertising, soliciting, offering for sale, and selling property management services in the State of Illinois.

### **DEFENDANTS' UNFAIR AND DECEPTIVE BUSINESS PRACTICES**

14. Since August 27, 2003, Defendants have been engaged in, and are presently engaged in the trade or commerce of advertising, offering for sale, and selling property management services in the State of Illinois.

15. Defendants entered into condominium association management agreements wherein Defendants agreed to manage real properties and provide management services for condominium associations; that included: collecting unit assessments, maintaining records of association income and expenses, preparing annual budgets, submitting annual reports, maintaining insurance records, maintaining common elements of the condominium properties, employing maintenance personnel, negotiating utility and service contracts, paying ongoing expenses on the properties, including utility, property tax and insurance bills, and depositing all monies collected on behalf of the Associations in bank accounts. See Exhibit 1 Condominium Association Management Agreement.

16. Beginning as early as the summer of 2008, problems arose with regard to the quality and reliability of Defendants' management services.

17. In order to manage the payment of ongoing accounts of their client associations, like those for utility, property tax and insurance, the Defendants were the designated recipients of condominium association bills, but the Defendants failed to pay utility bills as agreed, and misrepresented to their client associations that the bills were paid. As a result of this failure, utility services for many of the client associations' properties were shut-off.

18. In some cases, Defendants failed to pay property liability and casualty insurance, and the insurance lapsed. The Defendants also failed to inform their association customers of the discontinued coverage.

19. Defendants agreed to send notices to association members who were delinquent in paying their assessments. However, Defendants failed to send such notices.

20. Defendants collected assessments from different condominium associations, commingled the accounts, and failed to keep separate books to track the ownership of the funds.

21. Defendants took money they collected from their client associations meant to pay the creditors of those associations, but Defendants retained the money, which was lawfully the property of the associations, and converted the funds to the Defendants' own use.

22. Although Defendants agreed to provide monthly statements on condo assessment account balances, they later failed to provide such statements.

23. When consumers called Defendants to express their concerns, Defendants avoided taking their calls and failed to return the calls they missed.

24. Since February 2009, fifteen consumer complaints have been filed with the Better Business Bureau and six consumer complaints with the Office of the Illinois Attorney General against the Defendants by members of condominium associations that did business with Defendants. Those complaints allege similar unfair and deceptive property management practices.

#### **APPLICABLE STATUTES**

25. Section 2 of the Consumer Fraud Act, 815 ILCS 505/2, provides:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise,

misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

## **VIOLATIONS**

### **CONSUMER FRAUD ACT**

26. The Defendants have engaged in a course of trade or commerce which constitutes unfair or deceptive acts or practices declared unlawful under Section 2 of the Consumer Fraud Act, 815 ILCS 505/2, by:

- a. representing, expressly or by implication, that they would provide property management services in a competent and professional manner, when in fact, they failed, and continue to fail to do so;
- b. accepting money from consumers for condominium association assessments and then failing to timely pay condominium bills as agreed resulting in services being shut-off;
- c. collecting assessments from consumers, who were members of client condominium associations, to pay property insurance premiums but, instead, permitting the property insurance to lapse, and failing to disclose this fact to consumers;
- d. collecting assessments, but failing to return balances to consumers;
- e. representing that invoices for condominium insurance and utilities were paid and association account maintenance issues were resolved, when in fact, they were not;
- f. failing to notify association members of delinquent assessment accounts; and
- g. failing to provide monthly statements on condominium assessment account balances to associations and their members.

## **REMEDIES**

27. Section 7 of the Consumer Fraud Act, 815 ILCS 505/7, provides:

Whenever the Attorney General or a State's Attorney has reason to believe that any person is using, has used, or is about to use any method, act or practice declared by this Act to be unlawful, and that proceedings would be in the public interest, he or she may bring an action in the name of the People of the State against such person to restrain by preliminary or permanent injunction the use of such method, act or practice. The Court, in its discretion, may exercise all powers necessary, including, but not limited to: injunction; revocation, forfeiture or suspension of any license, charter, franchise, certificate or other evidence of authority of any person to do business in this State; appointment of a receiver; dissolution of domestic corporations or association suspension or termination of the right of foreign corporations or associations to do business in this State; and restitution.

In addition to the remedies provided herein, the Attorney General or State's Attorney may request and the Court may impose a civil penalty in a sum not to exceed \$50,000 against any person found by the Court to have engaged in any method, act or practice declared unlawful under this Act. In the event the court finds the method, act or practice to have been entered into with the intent to defraud, the court has the authority to impose a civil penalty in a sum not to exceed \$50,000 per violation.

In addition to any other civil penalty provided in this Section, if a person is found by the court to have engaged in any method, act, or practice declared unlawful under this Act, and the violation was committed against a person 65 years of age or older, the court may impose an additional civil penalty not to exceed \$10,000 for each violation.

28. Section 10 of the Consumer Fraud Act, 815 ILCS 505/10, provides that:

"In any action brought under the provisions of this Act, the Attorney General or the State's Attorney is entitled to recover costs for the use of this State."

## **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays that this Honorable Court enter an Order:

A. Finding that the Defendants have violated Sections 2 of the Consumer Fraud Act, including, but not limited to, the unlawful acts and practices alleged herein;

B. Temporarily, preliminarily and permanently enjoining Defendants from engaging in the business of condominium property management, in or from the State of Illinois;

C. Temporarily, preliminarily, and permanently enjoining Defendants from violating Section 2 of the Consumer Fraud Act;

D. Declaring that all contracts entered into between the Defendants and Illinois consumers or condominium associations by the use of methods and practices declared unlawful are rescinded and requiring that full restitution be made to said consumers;

E. Assessing a civil penalty in the amount of Fifty Thousand Dollars (\$50,000) per violation of the Act found by the Court to have been committed by Defendants with the intent to defraud; if the Court finds Defendants have engaged in methods, acts or practices declared unlawful by the Act, without the intent to defraud, then assessing a statutory civil penalty of Fifty Thousand Dollars (\$50,000), all as provided in Section 7 of the Consumer Fraud Act, 815 ILCS 505/7;

F. Assessing an additional civil penalty in the amount of Ten Thousand Dollars (\$10,000) per violation of the Consumer Fraud Act found by the Court to have been committed by Defendants against a person 65 years of age and older as provided in Section 7(c) of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/7(c);

G. Requiring Defendants to pay all costs for the prosecution and investigation of this action, as provided by Section 10 of the Consumer Fraud Act, 815 ILCS 505/10; and

H. Providing such other and further equitable relief as justice and equity may require.

Attorney #99000  
**LISA MADIGAN**  
Attorney General of Illinois  
**JAMES D. KOLE**  
Chief, Consumer Fraud Bureau  
**KIMBERLY SLIDER**


Respectfully Submitted,  
THE PEOPLE OF THE STATE OF  
ILLINOIS, by LISA MADIGAN,  
ATTORNEY GENERAL OF ILLINOIS

BY: 

**JAMES D. KOLE**  
Chief, Consumer Fraud Bureau



Assistant Attorney General  
Consumer Fraud Bureau  
100 W. Randolph Street, 12<sup>th</sup> Floor  
312-814-8966 Telephone  
312-814-2593 FAX

BY:   
**KIMBERLY SLIDER**  
Assistant Attorney General  
Consumer Fraud Bureau

## Exhibit 1

*Van Witz*

Management Corp.  
Property Management Division

## CONDOMINIUM ASSOCIATION MANAGEMENT AGREEMENT

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ACCOUNT # 106

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Association: 6155 Marshall Condominiums Association.

Agent: Van Witz Management Corp.

For Property Located At:  
6155 S. Marshall Avee  
Chicago Ridge, Illinois 60415

Beginning: February 1, 2004

Ending: January 31, 2005

This agreement (the "Agreement") is made and entered into this 1st day of February, 2004 by the unit owners' association known as 6155 Marshall Condo Association of Chicago Ridge (the "Association"), which is established in accordance with the laws of the State of Illinois for the property known as 6155 Marshall Condo Association, located at 6155 S. Marshall Ave in Chicago Ridge, Illinois (the "Property"), and Van Witz Management Corp. (the "Agent").

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#### **AUTHORITY OF THE AGREEMENT**

The Board of Directors of the Association (the "Board"), on behalf of the Association, hereby appoints Agent to manage the Property, and Agent accepts appointment to manage the Property.

The parties further agree as follows:

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#### **Section 1: TERM OF AGREEMENT**

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The Board appoints Agent exclusively to manage the Property for a period of one (1) year, beginning February 1, 2004 and thereafter for periods of one year unless this Agreement is terminated as provided in this section or sections 11 or 12. Either party may terminate this Agreement at the end of the initial term or at the end of any one year renewal period provided that written notice is given to the other party on or before the sixtieth (60<sup>th</sup>) day prior to the expiration of the initial term on or before the sixtieth (60<sup>th</sup>) day prior to the expiration of such one-year renewal period.

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#### **Section 2: SERVICES OF AGENT**

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Agent shall manage property to the extent, for the period, and upon the terms of this Agreement. Agent shall perform the following services in the name of and on behalf of the Association, and the Association hereby gives the Agent the authority and powers required to perform these services.

##### **2.1 COLLECTION OF ASSESSMENTS**

Agent shall collect (and give receipts for, if CASH) all monthly and other assessments and other monies that are due the Association with respect to the Property and for all rental or other payments from concessionaires, if any. HOWEVER, Agent shall have no authority or responsibility to collect delinquent assessments or other charges except to send notices of delinquency. EXCEPT WHEN SPECIFICALLY INSTRUCTED BY THE BOARD, THE AGENT SHALL INFORM THE BOARD OF SAID DELINQUENCIES AND AT THE BOARD'S DIRECTION, FILE LIENS ON THE BOARD'S BEHALF.

##### **2.2 RECORDS OF INCOME AND EXPENDITURES**

Agent shall maintain records of all income and expenses relating to the Property and shall submit to the Association on or before the 30<sup>th</sup> day of the following month, a statement of receipts and disbursements for the preceding month, including a statement of the balance in the operating account for the Property.

##### **2.3 PREPARATION OF ANNUAL BUDGET**

Sixty (60) days prior to the beginning of each fiscal year, which begins January 1<sup>st</sup>, agent shall prepare and submit to the Board a recommended Annual Budget for the next year showing anticipated income and expenses for such year.

#### **2.4 SUBMISSION OF ANNUAL REPORT**

Within 30 days after the end of each fiscal year, Agent shall submit to the Association a summary of all receipts and disbursements relating to the Property for the preceding year. HOWEVER, submission of such annual report shall not be construed to require Agent to supply audit. Any audit required by the Association shall be prepared at the Association's expense by an auditor(s) of the Association's selection.

#### **2.5 MAINTENANCE OF COMMON ELEMENTS**

Subject to the direction of the Board, at the expense of the Association and in accordance with the Association's approved budget, Agent shall cause the common elements of the Property to be maintained according to appropriate standards of maintenance consistent with the character of the Property, including interior and exterior building inspection and repair.

#### **2.6 EMPLOYMENT OF PERSONNEL**

Agent shall hire, pay, negotiate collective bargaining agreements with (if necessary), supervise, and discharge whatever personnel may be required to maintain and operate the Property on behalf of the Association and in accordance with the budget, job standards and wage rates previously approved by the Association. All such personnel shall be employees of the Association and not of Agent, and all salaries, taxes, and other expenses payable to or on account of such employees shall be operating expenses of the Property.

#### **2.7 PAYMENT OF EMPLOYMENT TAXES**

Agent shall, on behalf of the Association, execute and file all tax and other returns and do and perform all acts required of the Association as an employer under the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, all applicable federal, state, and local income tax laws, and all other laws, regulations, and/or ordinances governing employment and payment of wages. Upon request, the Board shall promptly execute and deliver to Agent all necessary powers of attorney, notices of appointment, and the like. The Association shall supply all funds to pay any taxes.

#### **2.8 UTILITIES AND SERVICES CONTRACTS**

Subject to the direction of the Board and on behalf of the Association, Agent shall negotiate contracts for water, electricity; gas, telephone, and such other services as may be necessary or advisable for the common elements of the Property. Agent shall also purchase on behalf of the Association such equipment, tools, appliances, materials and supplies as are necessary for the proper operation and maintenance of the Property. All such contracts and purchases shall be executed in the name of the Association by its Board of Directors or by the agent, if so directed by the Board, and at the Association's expense.

#### **2.9 PAYMENT OF EXPENSES**

From the funds of the Association, Agent shall pay all expenses of the Property, including taxes, building and elevator inspection fees, water rates and other governmental charges, and all other charges of obligations incurred by the Association or by Agent on behalf of the Association with respect to the maintenance or operation of the Property or pursuant to the terms of this Agreement or pursuant to the other authority granted by the Board on behalf of the Association.

#### **2.10 RECORDS OF INSURANCE**

Agent shall maintain appropriate records of all insurance coverage for the Property carried by the Association as specified in paragraph 10.2. Agent shall cooperate with the Board in investigating and reporting all accidents or claims for damage relating to the ownership, operation, and maintenance of the common elements of the Property, including any damage or destruction to them.

#### **2.11 OTHER SPECIFIC SERVICES OF AGENT**

\_\_\_\_\_ Charges will be negotiated as optional services are required \_\_\_\_\_

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### **Section 3: LIMITATION OF EXPENDITURES BY AGENT**

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In discharging its responsibilities under Section 2 of the Agreement, Agent shall not make any unbudgeted expenditures or incur any nonrecurring contractual obligation exceeding \$1,000.00 without the prior consent of the Association through the Board. HOWEVER, no such consent shall be required to repay any advances made by the Agent under the terms of Section 5. Notwithstanding these limitations, Agent may, on behalf of the Association and without the prior consent of the Board, expend any amount or incur a contractual obligation in any amount required to deal with emergency conditions which may involve a danger to life or property or which may threaten the safety of the Property or the individual owners and occupants or which may threaten the suspension of any necessary service to the Property.

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### **Section 4. AGENT NOT RESPONSIBLE FOR MAINTENANCE OF INDIVIDUAL UNITS**

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Agent shall have no authority or responsibility for maintenance or repairs to individual units in the Property. Such maintenance and repairs shall be the sole responsibility of the owners individually.

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### **Section 5: DISPOSITION OF FUNDS**

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Agent shall, on behalf of the Association, deposit collections and pay expenses of the Property as stated below.

#### **5.1 DISPOSITION OF FUNDS**

Agent shall deposit all monies collected on behalf of the Association in a bank or other financial institution whose deposits are insured by the federal government or such other depository as directed by the Association in writing. The funds of the Association shall at all times be maintained separate and apart from Agent's own funds and from the funds of any others. A DESIGNATED BOARD MEMBER and Agent's designees shall be the only parties authorized to draw upon such accounts. Agent shall not be held liable in the event of bankruptcy or failure of such depository. Such operating account shall not be required to bear interest.

#### **5.2 PAYMENT OF EXPENSES**

Agent shall pay all expenses of operation and management of the Property from the Association's funds held in account by Agent. Any amounts owed to Agent by the Association shall also be paid from such account at any time with prior notice to the Association.

#### **5.3 AGENT NOT REQUIRED TO ADVANCE FUNDS**

Agent shall have no obligation to advance funds to the Association for any purpose whatsoever. Any funds advanced to the Association by Agent shall be repaid to Agent immediately from the Association's funds. Any sums due Agent under any provision of this Agreement, and not paid within ten (10) days after such sums have become due, shall bear interest at the rate of 10% per annum. The ten day period begins from the date Board is notified of such charge.

#### **5.4 BONDING OF EMPLOYEES**

All employees of Agent who handle or are responsible for the safekeeping of any monies of the Association shall be covered by a bond protecting the Association. Such bond shall be in an amount and with a company determined by the Association and may be a blanket or umbrella bond. The expense of such bonding shall be paid by the Association.

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### **Section 6: ATTENDANCE AT BOARD MEETINGS**

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Agent, or designated employee or other representative of Agent, shall attend **three (3) regular two hour meetings of the Board of Directors each year and the annual meeting of the Association.** Upon not less than 72 hours notice, Agent or its designated representative shall attend additional meetings of the Board or of the Association as requested, provided that the Association shall pay Agent **\$50.00 per hour** for that individual's attendance at each meeting. Agent or its representative shall be custodian of the official records of the Board and the Association. HOWEVER, neither Agent nor its representative shall be required to record the minutes of such meetings.

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#### **Section 7: ONE BOARD MEMBER TO DEAL WITH AGENT**

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The Board shall designate one of its members who shall be authorized to deal with Agent on any matter relating to the management of the Property. Agent shall not accept directions or instructions with regard to the management of the Property from anyone else. In the absence of any other designation by the Board, the President of the Board shall be deemed to have this authority. Board appoints the Secretary, as alternate, should the President be unavailable. Agent may, but is not required to, submit any matter, direction, instruction or the like to the Board and shall then follow the direction of the Board.

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#### **Section 8: LIMITATION OF AGENT'S AUTHORITY AND RESPONSIBILITY**

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Agent's authority to act and responsibility for the Property shall be subject to the limitations set forth below.

##### **8.1 STRUCTURAL CHANGES**

Agent shall have no authority to make any structural changes in the Property or to make any other major alterations or additions in or to any building or equipment therein, except such emergency repairs as may be required because of danger to life or property or which are immediately necessary for the preservation and safety of the Property or for the safety of the individual owners and occupants or which are required to avoid the suspension of any necessary service to the Property.

##### **8.2 BUILDING COMPLIANCE**

Agent shall not be responsible for the compliance of the Property or any of its equipment with the requirements of any building codes or with any statutes, ordinances, laws, rules or regulations (including those relating to the existence and disposal of solid, liquid, and gaseous wastes, and toxic or hazardous substances) of any city, county, state, or federal governments or agencies, or any public authority or official thereof having jurisdiction over it. HOWEVER, Agent shall notify the Association promptly or forward to the Association promptly any complaints, warnings, notices, or summonses received by Agent relating to such matters. The Association represents that to the best of its collective knowledge the Property complies with all such requirements, and the Association authorizes Agent to disclose the ownership of the Property to any such officials and agrees to indemnify, defend, and hold Agent, its representative, servants, and employees, harmless of and from all loss, cost, expense, and liability whatsoever which may be imposed on them by reason of any present or future violation or alleged violation of such laws, ordinances, rules, or regulations.

##### **8.3 AGENT ASSUMES NO LIABILITY**

Agent assumes no liability whatsoever for any acts or omission of the Board of the Associations, or any previous boards or current or previous owners of the Property, or any previous management or other agent of either. Agent assumes no liability for any failure of or default by any individual unit owner in the payment of any assessment or other charges due the Association, pursuant to any lease or otherwise. Agent likewise assumes no liability for any failure of or default by concessionaires in any rental or other payments to the Association. Nor does the Agent assume any liability for previously unknown violations of environmental or other regulations which may become known during the period this Agreement is in effect. Any such regulatory violations or hazards discovered by Agent shall be brought to the attention of the Association in writing, and the Association shall promptly cure them.

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#### **Section 9: AGENT'S COMPENSATION**

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Agent shall be compensated for specific services as stated below.

##### **9.1 FOR MANAGEMENT SERVICES**

The association shall pay Agent a management fee of **\$125.00 per month**. The management fee shall be paid monthly in advance. The management fee shall be adjusted annually upon approval by the Board of Directors. No further charge shall be made by Agent for Agents services and other services of Agents professional staff, except as otherwise expressly provided in this Agreement. Any clerical services performed for the Association, such as preparation and circulation of notices and newsletters and general correspondence of the Association, shall be at the Associations' expense, including postage and other expenses.

**9.2 FOR CONSTRUCTION, REMODELING, OR OTHER CONTRACTING SERVICES**  
(But excluding services covered in 2.5 hereof) Charges will be negotiated as services are required.

**9.3 FOR OTHER SERVICES**

AGENT SHALL MAIL A MONTHLY INVOICE OR PAYMENT BOOKLET TO EACH RESIDENT PER PARAGRAPH 2.1. The cost of the payment booklet and/or invoices will be charged back to the association.

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**Section 10: OBLIGATIONS OF THE ASSOCIATION**

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The Association shall insure the Property, Agent, Board Members and itself against liability and bear the expense of any and all litigation against the Property, Agent, and the Association as stated below

**10.1 SAVE AGENT HARMLESS FROM LIABILITY SUITS**

**10.2 ESTABLISH AND MAINTAIN LIABILITY INSURANCE**

The association shall carry at its own expense, public liability, boiler, fire and extended coverage, elevator liability (if elevators are part of the equipment of the Property), and workers' compensation, Board & Director insurance, and such other insurance as may be necessary or appropriate. Such insurance policies shall name both the Association and Agent as insureds, and their coverage shall be adequate to protect the interests of both parties and in form, substance, and amounts reasonably satisfactory. The Association shall provide Agent with certificates evidencing such insurance or with duplicate copies of such policies prior to the date of execution of this Agreement. Said policies shall provide that notice of default or cancellation shall be sent to Agent as well as to the Association and shall require a minimum of 10 days written notice to Agent before any cancellation of or changes to said policies. AT THE TIME OF THE BUDGET SUBMITTAL (REF.PARAGRAPH 3) THE AGENT SHALL MAKE A RECOMMENDATION ON INSURANCE COVERAGE & RATES TO THE BOARD.

**10.3 PAY ALL EXPENSES OF ANY LITIGATION**

The Association shall pay all expenses incurred by Agent including, but not limited to, Agents' cost and time, any liability, fines, penalties or the like, settlement amounts, and attorney fees for counsel employed to represent Agent or the Association in any proceeding or suit involving any alleged or actual violation by Agent or the Association or the Board, or any combination of all of them, of any law or regulation of any governmental body pertaining to environmental protection, fair housing, or fair employment, including but not limited to, and law prohibiting or making illegal discrimination on the basis of race, sex, creed, color, religion, national origin, family status, or mental or physical handicap. HOWEVER, the Association shall not be responsible to Agent for any such expenses in the event Agent is finally adjudged to have personally, and not in a representative capacity, violated any such law. Nothing contained in this Agreement shall obligate Agent to employ legal counsel to represent the Board or the Association in any such proceeding or suit.

**10.4 SAVE AGENT HARMLESS FROM LABOR LAW VIOLATIONS**

The Association shall indemnify, defend, and save Agent harmless from all claims, investigations, and suits, or from the Association's or the Board's actions or failures to act, with respect to any alleged or actual violation of state or federal labor laws. The Association's obligation with respect to such violation (s) shall include payment of all settlements, judgements, damages, liquidated damages, penalties, forfeitures, back pay awards, court costs, litigation expense, and attorneys' fees.

**10.5 APPROVE ANNUAL BUDGET**

Agent shall work-up proposed budget with a Board member. Within thirty (30) days of receipt of the recommended Annual Budget, prepared by Agent and Board member, the Board shall either approve the budget as submitted or provide Agent with written notice setting forth those items which are unacceptable to the Board or provide Agent with written notice advising Agent what additional information is required. Failure to provide such notice to Agent within thirty (30) days period shall be deemed as approval of the



Annual Budget by the Board. Upon approval, Agent shall be authorized to operate and manage the Property in accordance with the Annual Budget.

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#### **Section 11: TERMINATION BY AGENT FOR CAUSE**

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Agent shall have the right to cancel this Agreement at any time in the event that any insurance required of the Association is not maintained without any lapse. Agent shall also have the right to cancel this Agreement at any time in the event it is alleged or charged that the Property or any equipment therein or act or failure to act by the Board or the Association with respect to the Property or the sale, rental, or other disposition thereof or with respect to the hiring of employees to manage it fails to comply with or is in violation of any requirement of any constitutional provision, statute, ordinance, law, or regulation of any governmental body or any order of ruling of any public authority or official thereof having or claiming to have jurisdiction over it, and Agent in its sole and absolute discretion considers that the action or position of the Association or the Board with respect thereto may result in damage or liability to Agent, or disciplinary proceeding with respect to Agents license. Agent shall provide written notice to the Association of its election to terminate this Agreement, in which case termination shall be effective upon the service of such notice. The Agent may cancel this Agreement at any time on not less than thirty (30) days prior written notice to the Association.

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#### **Section 12: TERMINATION BY THE ASSOCIATION (Cancellation Fee)**

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The Association may cancel this Agreement at any time on not less than thirty (30) days prior written notice to Agent. In the event of termination, agent shall receive a termination fee equal to twenty-five percent (25%) of the fee which agent would receive over the remaining term hereof. Agent may take such fee from the funds of the Association in its possession.

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#### **Section 13: ASSOCIATION RESPONSIBLE FOR PAYMENTS**

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Upon termination of or withdrawal from this Agreement by either party, the Association shall assume the obligations of any contract or outstanding bill executed by Agent under this Agreement for and on behalf of the Association and responsibility for all payment of all unpaid bills Agent shall deliver to the Association, 30 days after this Agreement is terminated, any balance of monies due the Association which were held by Agent with respect to the Property, as well as a final accounting reflecting the balance of income and expenses with respect to the Property as of the date of termination or withdrawal, and all records, contracts, leases, receipts for deposits, and other papers or documents which pertain to the Property.

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#### **Section 14: RELATIONSHIP OF AGENT TO THE ASSOCIATION**

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The relationship of the parties to this Agreement shall be that of Principal and Agent, and all duties to be performed by Agent under this agreement shall be for and on behalf of, in the name of and for the account of the Association. In taking any action under this Agreement, Agent shall be acting only as Agent for the Association, and nothing in this Agreement shall be construed as creating a partnership, joint venture, or any other relationship between the parties to this Agreement except that of Principal and Agent, or as requiring Agent bear any portion of losses arising out of or connected with the ownership or operation of the Property. Nor shall Agent at any time during the period of this Agreement be considered a direct employee of the association. Neither party shall have the power to bind or obligate the other except as expressly set forth in this Agreement, except that Agent is Authorized to act with such additional authority and power as may be necessary to carry out the spirit and intent of this Agreement.

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#### **Section 15: INDEMNIFICATION SURVIVES TERMINATION**

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All representations and warranties of this parties contained herein shall survive the termination of this Agreement. All provisions of this Agreement that require the Association to have insured or to defend, reimburse, or indemnify Agent shall survive any termination: and if Agent is or becomes involved in any proceeding or litigation by reason of having been the Associations' Agent, such provisions shall apply as if this Agreement were still in effect.

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#### **Section 16: HEADINGS**

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All headings and subheadings employed within this Agreement are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

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#### **Section 17: FORCE MAJEUR**

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Any delays in the performance of any obligation of Agent under this Agreement shall be excused to the extent that such delays are caused by wars, national emergencies, natural disasters, strikes, labor disputes, utility failures, government regulations, riots, adverse weather, and other similar causes not within the control of Agent, and any time periods required for performance shall be extended accordingly.

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#### **Section 18: COMPLETE AGREEMENT**

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This Agreement, including any specified attachments, constitutes the entire agreement between the Association and Agent with respect to the management and operation of the Property and supersedes and replaces any and all previous management agreements entered into or/and negotiated between the Association and Agent relating to the Property covered by this agreement. No change to this Agreement shall be valid unless made by supplemental written agreement executed and approved by the Association and Agent. Except as otherwise provided herein, any and all amendments, additions, or deletions to this Agreement shall be null and void unless approved by the Association and Agent in writing. Each party to this Agreement hereby acknowledges and agrees that the other party has made no warranties, representations, covenants or agreements, express or implied, to such party, other than those expressly set forth herein.

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#### **Section 19: RIGHTS CUMULATIVE-NO WAIVER**

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No right or remedy herein conferred upon or reserved to either of the parties to this Agreement is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this Agreement or now or hereafter legally existing upon the occurrence of an event of default under this Agreement. The failure of either party to this Agreement to insist at any time upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy as provided in this Agreement, shall not impair any such right or remedy or be construed as a waiver or relinquishment of such right or remedy with respect to subsequent defaults. Every right and remedy given by this Agreement to the parties to it may be exercised from time to time and as often as may be deemed expedient by those parties.

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#### **Section 20: APPLICABLE LAW AND PARTIAL INVALIDITY**

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The execution, interpretation, and performance of this Agreement shall in all respects be controlled and governed by the laws of the State of Illinois. If any part of this Agreement shall be declared invalid or unenforceable, Agent or Association shall have the option to terminate this Agreement by notice to the Association or Agent.

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**Section 21: NOTICE**

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Any notice required or provided for in this Agreement shall be in writing and shall be addressed as indicated below or to such other address as Agent or the Association may specify hereafter in writing.

**21.1 TO AGENT**

Van Witz Management Corp.  
8138 W. 111<sup>th</sup> Street  
Palos Hills, Illinois 60465

**21.2 TO THE ASSOCIATION**

President of the Board

**21.3 DELIVERY OF NOTICES**

Notices or other communication between the parties to this Agreement may be mailed by United States registered or certified mail, return receipt requested, postage prepaid, and may be deposited in a United States Post Office or a depository regularly maintained by the post office. Such notices may also be delivered by hand or by any other method or means permitted by law.

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**Section 22: AGREEMENT BINDING ON SUCCESSORS AND ASSIGNS**

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This Agreement shall be binding upon and inure to the benefit of the successors and assigns of Agent and the heirs, administrators, successors, and assigns of the Association. Notwithstanding the preceding sentence, Agent shall not assign its interest under this Agreement except in connection with the sale of all or substantially all of the assets of its business. In the event of such sale, Agent shall be released from all liability under this Agreement upon the express assumption of such liability by its assignee.

Signatures this 31 day of January, 2004.

IN WITNESS WHEREOF, the parties have affixed or caused to be affixed their respective signatures.

WITNESSES:

BOARD OF DIRECTORS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dennis Foley - President  
\_\_\_\_\_  
\_\_\_\_\_

AGENT: Van Witz Management Corp.

By. \_\_\_\_\_